Local 243, Laborers' International Union of North America, AFL–CIO *and* A. Amorello & Sons, Inc. and International Brotherhood of Teamsters, Local 170, AFL–CIO. Case 1–CD–925

July 22, 1994

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, BROWNING, AND COHEN

The charge in this Section 10(k) proceeding was filed April 19, 1993,[1] by the Employer, A. Amorello & Sons, Inc., alleging that the Respondent, Local 243, Laborers' International Union of North America, AFL–CIO, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the International Brotherhood of Teamsters, Local 170, AFL–CIO. The hearing was held May 12, 1993, before Hearing Officer Laura A. Sacks. Thereafter, the parties filed briefs in support of their positions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free of prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company engages in the business of heavy and highway construction involving paving and excavating, installing, and repairing sewer systems, out of its facility in Worcester, Massachusetts, where it annually, in the course and conduct of its business operation, purchases and receives goods, materials, and supplies valued in excess of $50,000 directly from suppliers located outside the State of Massachusetts. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulate, and we find, that Laborers' Local 243 and International Brotherhood of Teamsters Local 170 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has been a signatory to agreements with the Laborers since the late 1940s and a signatory to agreements with the Teamsters since the late 1960s.

Amorello employed 20 Laborers Local 243-represented employees, 5 Teamsters Local 170-represented employees, and 10 Local 4 Operating Engineers-represented employees during the 1992 season. Amorello's president, Anthony Amorello, testified that, traditionally and customarily, Laborers-represented employees have driven the pickup, 350 Ford (6-wheel) rack body, and International (6-wheel) dump trucks. On the other hand, Teamsters-represented employees have driven, almost exclusively, the Company's 10-wheel, trailers, and low-bed trucks. On rare occasions, Teamsters Local 170-represented employees have driven the 6-wheel trucks. Occasionally Teamsters-represented employees performed tasks generally performed by Laborers-represented employees, including mixing concrete, rolling materials, pushing wheelbarrows, digging trenches, and paving. For the 1993 season Amorello decided not to own and operate 10-wheel dump trucks, trailers, and low beds. Instead, Amorello rented 10-wheel trucks and trailers, driven by employees of the leasing company.

About January 1993, James Porter, Local 243's business manager, called Anthony Amorello and expressed concern that Teamsters Local 170 would try to obtain the work of driving the smaller trucks. On April 7, Victor Monteverdi, a Teamsters-represented employee and steward, filed a grievance regarding the Employer's use of a Ford 350 dump truck to haul material while Monteverdi was on layoff. About April 12, Laborers' District Council Manager McNalley phoned Amorello and stated that if the Teamsters took over the 6-wheel trucks, the Laborers would strike or picket Amorello.

B. *Work in Dispute*

The disputed work involves driving the Employer's 6-wheel trucks.

C. *Contentions of the Parties*

The Employer contends that there is reasonable cause to believe that the Laborers violated Section 8(b)(4)(D) of the Act and that the work in dispute should be awarded to employees represented by the Laborers. The Employer and the Laborers contend that the work in dispute has been assigned primarily to the Laborers-represented employees, although the Teamsters-represented employees, on rare occasions, have been assigned the work. Further, the Laborers and the Employer rely on employer preference and on economy and efficiency in arguing that the disputed work should be assigned to employees represented by the Laborers. The Employer argues further that an award to employees represented by the Laborers is supported by its agreement with that Union. The Laborers request a broad, areawide award of the disputed work claiming that Teamsters Local 170 ''has engaged in a long-term effort to strip other construction trades unions of work assignments involving the operation of small trucks.''

[1] All subsequent dates refer to 1993 unless otherwise specified.

Teamsters Local 170 asserts that it had an oral understanding with the Employer's president, Anthony Amorello, that the laborers could drive the 6-wheel trucks as long as all the teamsters who wished to work were working, but that a teamster could bump a laborer from a 6-wheel truck to avoid being laid off. Local 170 also contends that the Employer's employees represented by Local 170 did the same hand work as the laborers when the teamsters were not needed for hauling. Local 170 further contends that the work now being done with the 6-wheel trucks includes work done before with the 10-wheel trucks. Local 170 also asserts that the Laborers and the Teamsters have an agreement which contains a mechanism to resolve jurisdictional disputes.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute.

Initially, we find that there are competing claims for the driving of the Employer's 6-wheels trucks. The Employer's president, Anthony Amorello, testified that, on March 4, 1993, Teamsters Local 170's business agent, Peter Mancuso, stated that Mancuso could not allow the Laborers to continue to drive the 6-wheel trucks. On April 7 the steward for Teamsters Local 170 filed a grievance over the Employer's use of a Ford 350 (6-wheel) truck driven by a laborer to haul material while the steward was on layoff. We also find reasonable cause to believe that Section 8(b)(4)(D) has been violated. Thus, Laborers' District Council Manager Paul McNalley told the Employer's president that if the Teamsters took over the 6-wheel trucks, the Laborers would strike or picket the Employer.[2]

Finally, we find that there is no agreed-upon method for the voluntary adjustment of the dispute binding all the parties. Thus, although the Teamsters and Laborers International Unions have an agreement that contains a mechanism for resolving their jurisdictional disputes, the Employer is not a party to the agreement. Local 170 points to article 2, item 5 of its collective-bargaining agreement with the Employer. However, that item applies only to the resolution of jurisdictional disputes between Local 170 and ''any other Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.''

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and we find that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering several factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Collective-bargaining agreements

The Employer has had a collective-bargaining relationship with the Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, since about the late 1940s. The Employer was a party to the contract effective June 1, 1991, through May 31, 1994, between the Labor Relations Division of Construction Industries of Massachusetts, Inc. (Association) and the Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, acting for and on the behalf of various Local unions, including Local 243. Article VIII, section 2 of this contract provides, inter alia, that heavy and highway construction as defined in the contract shall include the operation of all onsite pickup and service trucks.

The Employer has had a contract with the International Brotherhood of Teamsters, Local 170, AFL–CIO, since around the 1960s. The latest contract was effective from June 1, 1990, to May 31, 1993. The contract applies to the transportation of all building and excavating materials and equipment and to the driving of certain trucks when hauling materials, equipment, and parts to, on, and from the jobsite.

Both contracts arguably cover the work in dispute. Under these circumstances, we find the factor of collective-bargaining agreements does not favor an award of the disputed work to either group of employees.[3]

[2] The Employer's contract was with the Massachusetts Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, ''acting for and on the behalf'' of various Local unions, including Local 243. Thus, we conclude that the District Council was acting on behalf of Local 243 when it threatened to strike or picket the Employer if work traditionally performed by Local 243-represented employees was reassigned to Teamsters-represented employees.

[3] As to Local 170's contention that it had an ''oral understanding'' with the Employer that a teamster could bump a laborer from a 6-wheel truck to avoid lay off, we note that although the Employer's president, Amorello, testified that he thought the Teamsters had allowed the Employer to assign to the laborers the driving of the 6-wheel trucks as a concession for signing with the Teamsters, he

2. Employer preference and past practice

The Employer has assigned the disputed work to Laborers Local 243-represented employees. As noted above, driving the 6-wheel trucks traditionally and customarily has been assigned to laborers, although on occasion teamsters have driven these trucks and performed the related manual work. The Employer prefers its assignment to employees represented by the Laborers to continue. Thus, the factor of employer preference and past practice favor the continued assignment of this work to the employees represented by the Laborers.

3. Area practice

The Employer's president, Amorello, testified that most of his competition was nonunion. Jack Valeri, a business agent for Teamsters Local 170, testified that Local 170-represented employees drive 6-wheel trucks at Capera Construction, as well as at other companies performing excavation work in the Worcester area. On the other hand, James Porter, business manager for Laborers' Local 243, testified that the area practice was that construction companies assigned driving the 6-wheel trucks to employees represented by the Laborers. Based on the evidence presented, we find that this factor is inconclusive and does not favor an award of the disputed work to either group of employees.

4. Relative skills

There is no specialized training for any of the Employer's employees, although state law does require a class II driver's license to drive any of the Employer's vehicles except pickup trucks and Ford 350 (6-wheel) trucks. The record does not show that either group of employees possesses any greater skills than the other in driving the 6-wheel trucks. We, therefore, find that this factor is inconclusive and does not favor an award of the disputed work to either group of employees.

5. Economy and efficiency of operations

Anthony Amorello, the Employer's president, testified that it is more economical and efficient to have the disputed work performed by Local 243-represented employees. He testified that they are more skilled at performing manual labor after the 6-wheel truck arrives at the jobsite and driving is not being required. Local 170 presented testimony that employees it represented had performed manual labor and had driven the 6-wheel trucks in the past. In these circumstances, we find that the factor of economy and efficiency of operations does not favor an award of the disputed work to either group of employees.

Conclusions

After considering all the relevant factors, we conclude that the Employer's employees represented by Laborers' Local 243 are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of employer preference and past practice. In making this determination, we are awarding the work to employees represented by Laborers' Local 243, not to that Union or its members.

Scope of Award

The Laborers Local 243 request a broad, areawide award covering the work in dispute.

The Board customarily declines to grant an areawide award in cases in which the *charged party* represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See *Laborers (Paul H. Schwendener, Inc.)*, 304 NLRB 623 (1991). Accordingly, we shall limit the present determination to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of A. Amorello & Sons, Inc., represented by Local 243, Laborers' International Union of North America, AFL–CIO, are entitled to perform the work of driving 6-wheel trucks for A. Amorello & Sons, Inc.

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could not recall any statement, made at any time, that the laborers could drive the 6-wheel trucks only as long as the teamsters were working. Nor is there any contention that the Laborers were a party to such an agreement. Therefore, even assuming that such an oral agreement existed, it does not negate the contract between the Employer and the Laborers.